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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,245	08/10/2001	Nikola Vukovljak	3882/10	5632
29858	7590	01/24/2005	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP			TAYLOR, BARRY W	
900 THIRD AVENUE			ART UNIT	PAPER NUMBER
NEW YORK, NY 10022			2643	

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/928,245

Applicant(s)

VUKOVLJAK ET AL.

Examiner

Barry W Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/7/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over "About ISMs, Netcool <sup>TM</sup>/Internet Service Monitors Version 1.1", Developer: Micromuse, Inc. (hereinafter Micromuse), Release date 1999 in view of Bowman-Amuah (6,542,593).

Regarding claims 1-37. Micromuse teaches testing realtime Internet availability and response time information on Internet protocols and applications by regularly testing that each service at user-defined intervals (see page 1). Micromuse Internet

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Service Monitors (ISMs) allow testing of the availability of a particular dial-up point by using existing Post Office Protocol (i.e. POP3), as well as, IMAP (see top page 2) the next-generation Internet Messaging Access Protocol that is likely to replace POP.

Micromuse also discloses the ISMs already allows for centralized configuration with distributed monitoring wherein each monitor "instance" is capable of supporting multiple "profiles" (see top of page 2, as well as, Applicant's specification especially page 2 lines 24-25, page 3 lines 4-5, page 4 lines 12 and 28-30). The Examiner notes that Micromuse ISMs read on Applicant's Service Monitor (SM) (see specification page 6 lines 28-29 wherein Applicant's define SM may also be referred to as Internet Service Monitor (ISM)). Micromuse openly admits benefits of earlier (i.e. released as early as 1999) ISMs that include pinpoints areas for improving "response time" against stated service levels for e-mail, file transfer, Web page transmission and other services (see the six benefits listed on page 2). Micromuse has already addressed early low-end tools for managing the twelve critical Internet services listed in Figure 1 (see page 3) wherein ISMs "actively" monitors and channels availability and response time data into a central, high performance, memory-resident repository called "ObjectServer" which combines the speed of a high-performance relational database with the flexibility of an "object-oriented" frame work enabling operators to associate Internet response time and availability data with other collected enterprise-wide events and see the "big picture" (see bottom of page 2 as well as Applicant's specification especially page 6 line 28 – page 7 line 6). Micromuse admits that because the suite is integrated with Netcool/OMNibus, the need for a separate staff of Internet specialists is reduced or

eliminated. ISMs track Internet service availability and response time automatically, and alert operators of potential problems (see top of page 3). Micromuse discloses ISMs act as a user of each service instead of passively waiting for a device or management system to send out a SNMP trap or log file (see second paragraph page 3 as well as Applicant's specification page 7 lines 7-13). Micromuse even discloses that ISMs improve the manageability of Internet connections, as well as corporate "intranets" and "extranets" (see page 3). Micromuse indeed discloses "dial" monitor capabilities (see figure 1 page 3). Micromuse openly admits to using threads and instances (see first full paragraph page 4). Micromuse have been using "multithreaded" architecture as early as 1999 (see second full paragraph page 4) allowing Internet Service Providers the ability to offer customized monitoring services. Micromuse list numerous features (see last five paragraphs page 4) including Web-based configuration based around the concept of "profiles" which include a list of locations where monitoring is to take place, as well as, running monitors in multiple locations. In fact, Micromuse already uses a server that runs on the same machine as the ISMs (see second to last paragraph page 4 which is the same as Applicant's figure 1, see Applicant's figure 1 wherein the Monitoring Station 100 includes both Server 150 and Service Monitors 110). Micromuse discloses the ISMs can already monitor multiple servers and services of each protocol (see last paragraph page 4). Micromuse already admits using architecture that enables simulation of a typical "dial-up", home-based Web transaction from a corporate Network Operations Center (NOC), even if the NOC actually has a high-bandwidth T1 connection (see last paragraph page 5 and continuing to top of page

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6). Micromuse pages 6 and 7 list the same individual functions as Applicant's specification page 9-10.

According to Applicants, Micromuse does not disclose any dial monitor process (see page 10, paper dated 10/28/2004).

Bowman-Amuah teaches an Open View Network Node Manager that receives performance information (col. 49 line 47 – col. 50 line 59) from dial up points (col. 26 line 57, see dial up point, such as Poin OF Presence---col. 50 lines 3-8) so as to display the node level network map of the network which allows service providers the ability to dynamically reconfigure the network so that it can guarantee a predetermined amount of bandwidth for the requested Quality Of Service (col. 4 lines 29-38, col. 9 lines 61-64, col. 10 lines 20-33, col. 13 lines 11-17, col. 14 line 58 – col. 22 line 62).

It would have been obvious for any one of ordinary skill in the art at the time of the invention to apply the teachings of Bowman-Amuah into that of Micromuse allowing service providers the ability to charge more money for higher quality of service by guaranteeing a predetermined amount of bandwidth for the requested quality of service.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

3. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231  
**or faxed to:**  
(703) 872 9314,

(for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (703) 305-4811, who is available Monday-Friday, 6:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached at (703) 305-4708. The facsimile phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (703) 305-4750, the 2600 Customer Service telephone number is (703) 306-0377.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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